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G.T., Appellant)	
)	
and)	Docket No. 16-0322
)	Issued: July 12, 2016
U.S. POSTAL SERVICE, POST OFFICE,)	
Jersey City, NJ, Employer)	
)	

Case Submitted on the Record

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On December 8, 2015 appellant filed a timely appeal of an August 6, 2015 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from June 5, 2013, the date of the most recent OWCP merit decision, to the filing of the current appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of appellant's claim.²

The issue is whether OWCP properly refused to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a).

² The Board notes that appellant submitted evidence with her appeal to the Board. The Board cannot consider this evidence as its review of the case is limited to the evidence of record which was before OWCP at the time of its final decision. 20 C.F.R. § 501.2(c); *see Steven S. Saleh*, 55 ECAB 169 (2003).

FACTUAL HISTORY

On March 11, 2015 appellant, appellant then a 41-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that her employment caused a cyst on her left wrist with tingling and numbness in the left hand. She indicated that she became aware of this disease or illness on December 4, 2014. Appellant did not stop work.

In a February 11, 2015 statement, appellant noted that late in November 2014 she noticed that a cyst was appearing on the inside of her left wrist and it got bigger over the next few weeks. She explained that, as she used her hands, she felt a tingling sensation and numbness in her left hand and fingers. Appellant indicated that her physician drained the cyst. She related that it was gone for about a month and a half and reappeared. Appellant advised that her physician was concerned and recommended further treatment.

Appellant described her employment activities which included pulling and lifting mail sacks up to 70 pounds from a slide and roller table which strained her wrists. She noted that it was mostly on the left side, placing more stress on her left hand and wrist. Furthermore, appellant loaded and unloaded mail trucks which required heavy and repetitive lifting of boxes and sacks. She indicated that she worked a minimum of 40 hours a week, 8 hours a day. Appellant advised that she previously had a ganglion cyst in 2007, while working as a mail carrier. She noted that she changed to a mail handler, to alleviate the stress on her wrists. Appellant indicated that it recurred in 2012, but she explained that the prior cysts did not cause numbness or tingling. She indicated that she was losing sensation and dropping things.

In a letter dated February 18, 2015, the employing establishment controverted the claim explaining that appellant had not previously reported that she was experiencing discomfort in any way.

In a February 10, 2015 report, Dr. Robert Lombardi, a Board-certified orthopedic surgeon, noted that appellant presented for reevaluation of a left wrist ganglion cyst. He explained that on December 4, 2014 appellant had received an aspiration of fluid and a cortisone injection to the left wrist for a ganglion cyst and a carpal tunnel brace for support. Dr. Lombardi advised that appellant indicated that her symptoms had not improved since her last visit and had returned since working with a repetitive motion. He also noted that appellant reported dropping objects due to her condition. Dr. Lombardi examined appellant's left wrist and found a large, marble-sized cyst on the left wrist. He diagnosed ganglion cyst on the left and possible carpal tunnel, pending electromyography (EMG) scan results. Dr. Lombardi opined that, based upon the history of injury and his examination, the current orthopedic complaints were causally related to her work as she had to manipulate, hold, and grasp on an ongoing basis. He requested authorization for the EMG and carpal tunnel surgery.

By letter dated April 20, 2015, OWCP advised appellant that additional factual and medical evidence was needed and allotted appellant 30 days within which to submit the requested information. It specifically noted that a physician's opinion explaining how employment activities caused or aggravated her medical condition had not been provided.

By decision dated June 5, 2015, OWCP denied appellant's claim. It found that the medical evidence of record did not demonstrate that the claimed medical condition was related to the established work-related events.

On July 30, 2015 appellant requested reconsideration on an appeal request form dated July 16, 2015.

In a decision dated August 6, 2015, OWCP denied appellant's request for reconsideration finding that, as she neither raised substantive legal questions, nor submitted new and relevant evidence, her request was insufficient to warrant review of its prior decision.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,³ OWCP's regulations provides that a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.⁴ To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant's application for review must be received within one year of the date of that decision.⁵ When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.⁶

ANALYSIS

In the present case, appellant has not shown that OWCP erroneously applied or interpreted a specific point of law; nor has she advanced a relevant legal argument not previously considered by OWCP. She merely completed a request for reconsideration form, but she did not submit any evidence or argument with her request.

Further, appellant's reconsideration request failed to submit any relevant and pertinent new evidence. As such, the Board finds that OWCP did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits in its August 6, 2015 decision.

CONCLUSION

The Board finds that OWCP properly refused to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a).

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b)(3).

⁵ *Id.* at § 10.607(a).

⁶ *Id.* at § 10.608(b).

ORDER

IT IS HEREBY ORDERED THAT the August 6, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 12, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board